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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,959	08/20/2003	John A. Menges	2102.0020001	4979

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WASHINGTON, DC 20005

EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,959

Applicant(s)

MENGENS ET AL.

Examiner

Michael C. Miggins

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/23/05, 6/7/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner's Comments/Response to Amendment

The Ex parte Quayle and notice of allowable subject matter of 4/5/05 is hereby withdrawn in favor of the rejections set forth below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of JP 2000335655 (English translation of abstract provided herein).

The admitted prior art discloses a cook and chill casing comprising a substantially rectangular bag having corners and formed from a plastic, tubular material, said bag having a food-receiving interior open at a first end and sealed at a second end, wherein said sealed end comprising a heat seal joining opposing sides of said bag (see instant specification pages 1-2, paragraphs [0002] – [0007]) (applies to instant claims 1 and 8).

The difference between the instant claims and the admitted prior art is that the admitted prior art fails to disclose a tapered seal that separates two corners of said

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tubular material from said interior and wherein said two corners provide handles for lifting said bag.

JP 2000335655 discloses a tapered seal (3 from Fig. 2) that separates two corners of said tubular material from said interior and wherein said two corners provide handles for lifting said bag (see English abstract and Fig. 2) in a casing for cooked food storage for the purpose of providing a casing that can be heated safely and contents removed simply (applies to instant claims 1-2).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention to have provided a tapered seal that separates two corners of said tubular material from said interior and wherein said two corners provide handles for lifting said bag in the invention of the admitted prior art in order to provide a casing that can be heated safely and contents removed simply as taught or suggested by JP 2000335655.

With regards to claim 7, it has been found that finding the workable or optimal range for a result effective variable such as thickness is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided the recited thickness in order to save on costs or improve mechanical properties such as stiffness.

3. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of JP 2000335655 (English translation of abstract provided

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herein), as applied to claims 1-2 and 7-8 above, and further in view of JP 07237675 (English translation of abstract provided herein).

The term "co-extruded" is a method limitation which is given little patentable weight since method claims are not germane to the patentability of a product in a product claims (MPEP 2113) (applies to instant claim 3).

The difference between the instant claims and the admitted prior art is that the admitted prior art fails to disclose wherein the tubular material comprises a three layer plastic film having one layer of nylon, one layer of polyethylene and an adhesive.

JP 07237675 discloses a tubular material comprises a three layer plastic film having one layer of nylon, one layer of polyethylene and an adhesive (since polyethylene and nylon are laminated, lamination involves heat and pressure with adhesive, English abstract) (applies to instant claims 3 and 5) in a casing for storing food for the purpose of providing food to be simply cooked by boiling or microwaving with a flavoring.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's was made to have provided wherein the tubular material comprising a three layer plastic film having one layer of nylon, one layer of polyethylene and an adhesive in the invention of the prior art in order to provide food which can be simply cooked by boiling or microwaving with a flavoring as taught or suggested by JP 07237675.

With regard to claims 4 and 6, it has been found that finding the workable or optimal range for a result effective variable such as thickness is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to

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one of ordinary skill in the art to have provided the recited thickness in order to save on costs or improve mechanical properties such as stiffness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCM
September 16, 2005

Michael C. Miggins
Primary Examiner
Art Unit 1772

